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SMITH et al. v. MULLEN et al.

June 13, 1912.

[75 S. E. 130.]

Deeds (§ 101*)—Description—Practical Construction.—Complainant's grantor purchased certain land from decedent, under whom defendant claimed, which the contract of sale described only as "40 acres of land, more or less, said land being part of Clifton [the name of a farm] and adjoining the lands of Alexander Pratt and Belvidere." The land was not surveyed, nor the boundaries fixed; but the parties went on it and, in the presence of witnesses, designated the lines and corners of the part intended to be sold, both expressing themselves as satisfied with the lines and corners then indicated, and with the body of land embraced within such limits. During the vendee's ownership, fences were built on the lines as indicated, which have been since maintained on those lines and regarded as showing the true boundaries. In a suit to settle the vendor's estate, a commissioner was appointed to convey the land, and his deed described it as 40 acres lying in the county of King George, and formerly a part of Clifton, adjoining and bounded by other lands of the vendor and certain others. It was afterwards ascertained that the tract so set off contained only 31.66 acres, and, the same having been conveyed to plaintiff, he sued to recover the balance. Held that, the land having been practically located, and neither the contract nor the commissioner's deed having contained a sufficiently definite description to enable a surveyor to locate it, plaintiff was bound by the practical location, and could not recover the deficiency in quantity.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 233; Dec. Dig. § 101.*]

Appeal from Corporation Court of Fredericksburg.

Suit by James B. Mullen and others against Galen R. Smith and others. Decree for complainants, and defendants appeal. Reversed and dismissed. (Cardwell and Whittle, JJ., absent.)

Alvin T. Embrey, for appellants.

Wm. D. Carter, for appellees.

KIDD et al. v. VIRGINIA SAFE DEPOSIT & TRUST CORPORATION et al.

June 13, 1912.

[75 S. E. 145.]

1. Contempt (§ 60*)—Criminal or Quasi Criminal Contempt—Evidence—Weight.—The rules of evidence applicable in criminal cases

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.

apply to a proceeding to punish for a criminal or quasi criminal contempt for the violation of a decree of court, and the offense must be proved beyond a reasonable doubt; and one cannot be punished summarily for contempt, without being brought clearly within Code 1904, § 3768, defining cases in which courts may punish for contempt.

[Ed. Note.—For other cases, see Contempt, Cent. Dig. §§ 182-187; Dec. Dig. § 60.*]

2. Contempt (§ 23*)—Violation of Decree.—A decree appointing a receiver of a bank, in a suit in which a depositor of a branch bank and her husband were not parties, contained no prohibition against the wife or husband. The manager of the branch was notified of the appointment and instructed to close the branch. The husband of the depositor, suspecting that something was wrong with the bank, sought out the manager, who told him that the bank was in trouble. The husband discovered that the manager had money enough to cash his wife's certificate, and obtained the cash therefor without any promise to refund the money. The wife had no knowledge of the transaction. Held, that the husband and wife were not guilty of contempt for violating the decree; it not appearing that the decree was personally served on defendants, or that they had actual notice of its rendition.

[Ed. Note.—For other cases, see Contempt, Cent. Dig. §§ 68-70; Dec. Dig. § 23.*]

3. Contempt (§ 79*)—Punishment.—The court, in a proceeding to punish for contempt, based on obtaining payment of a certificate of deposit after the appointment of a receiver of the bank, has no jurisdiction, where the evidence does not show defendant guilty of contempt, to require the refund of the money and imprison him until payment; imprisonment for debt being abolished by Code 1849, c. 188, § 2.

[Ed. Note.—For other cases, see Contempt, Cent. Dig. §§ 270, 274; Dec. Dig. § 79.*]

Appeal from Corporation Court of Alexandria.

E. L. Kidd and others were convicted of contempt of court for violating a decree of court in a suit instituted by the directors of the Virginia Safe Deposit & Trust Corporation against the corporation, and E. L. Kidd and wife appeal. Reversed as to appellants.

Coleman, Easley & Coleman, for appellants.

J. K. M. Norton and S. G. Brent, for appellee.

*For other cases see same topic and section NUMBER in Dec. Dig. & Am. Dig. Key No. Series & Rep'r Indexes.